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In the Supreme Court of the United States

OCTOBER TERM, 1990

ALETHA DEWSNUP, PETITIONER

v.

LOUIS L. TIMM, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

RONALD J. MANN
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

ALAN CHARLES RAUL
General Counsel
Department of Agriculture
Washington, D.C. 20250-1400

ERIC S. BENDERSON
Associate General Counsel for Litigation
Small Business Administration
409 Third Street SW
Washington, D.C. 20416

QUESTION PRESENTED

Section 506(d) of the Bankruptcy Code, 11 U.S.C. 506(d), provides in pertinent part: "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." The question presented is whether this provision permits a debtor to "strip down" a lien to the value of the collateral, when that value is less than the claim secured by the lien, or instead whether the provision voids a lien securing a claim when the claim is not allowed.

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INTEREST OF THE UNITED STATES

This case presents the question whether Section 506(d) of the Bankruptcy Code, 11 U.S.C. 506(d), enables a debtor to "strip down" a creditor's lien to the value of the collateral, when that value is less than the claim secured by the lien. This question is of great interest to the United States because its resolution will affect the level of security of any creditor holding an undersecured claim against a debtor that goes through bankruptcy, and because the federal government—whether through the Small Business Administration, the Farmers Home Administration, the Internal Revenue Service, or the Federal Deposit Insurance Corporation (as administrator of the properties of a number of failed depository institutions)—frequently holds such claims.

Because of the United States' broad perspective on this question, and because the United States takes a different view of the statute than either of the parties to the case, the United States is filing this brief to ensure that the broadest possible range of views informs this Court's evaluation of the question.

STATUTORY PROVISION INVOLVED

The text of 11 U.S.C. 506 is set out in the Appendix to this brief.

STATEMENT

1. On June 1, 1978, respondents loaned $119,000 to petitioner and her now-deceased husband. To secure their obligation to repay the loan, petitioner and her husband executed a deed of trust, granting a lien on two parcels of land they owned in Utah, as well as a collateral assignment of a contract to purchase some additional land. In 1979, petitioner defaulted under the terms of the deed of trust. Pursuant to the deed of trust and Utah law, respondents would have been entitled to accelerate the date of maturity of the loans (so that the entire amount immediately was due), to issue a notice of default, and eventually to sell the parcels at a public foreclosure sale to satisfy the debt and the expenses incurred in attempting to collect the debt. See J.A. 14, 37-39; Amended Trust Deed with Assignment of Rents, at 1 & ¶¶ 14-15; Utah Code Ann. §§ 57-1-20 to 57-1-37 (1990 & Supp. 1990).

2. In April 1981, after respondents had issued a notice of default but before the foreclosure sale occurred, petitioner filed a petition seeking reorganization under Chapter 11 of the Bankruptcy Code. That bankruptcy petition was dismissed in 1982, as was a second Chapter 11 petition that petitioner filed. Finally, in June 1984, petitioner filed a petition seeking liquidation under Chapter 7 of the Bankruptcy Code, out of which this case arises. Because of the pendency of these bankruptcy cases, respondents have not been able to conduct their foreclosure sale. J.A. 15-16.

3. In 1987, petitioner commenced this adversary proceeding, contending that because the debt then held by respondents of approximately $120,000 exceeded the fair market value of the collateral, the bankruptcy court should reduce or "strip down" the amount of the lien to the fair market value of the collateral. In particular, petitioner argued that, pursuant to Section 506(a), respondents would have an allowed secured claim only to the extent of the value of their collateral.[1] Petitioner then argued that Section 506(d)[2] required the court to void the lien on the remaining portion of respondents' claim, which Section 506(a) would treat as an allowed unsecured claim.

The bankruptcy court refused to grant relief. First, it valued the collateral at $39,000. The court assumed that the property had been abandoned, reasoning that petitioner, as the debtor, would not have standing to void the lien if the bankruptcy trustee still controlled the property.[3] Pet. App. 16a-17a. The bankruptcy court then rejected petitioner's request, concluding that once property is abandoned it no longer falls within the scope of Section 506(a), which applies only to "property in which the estate has an interest," and that it was "inconceivable * * * that Congress could have intended to create an avoiding power in a Chapter 7 debtor, respecting property which is not to be administered through the bank-

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[1] Section 506(a) provides, in pertinent part, that "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest * * * is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property." The entire text of Section 506(a) is set out in the Appendix, *infra*.

[2] In pertinent part, Section 506(d) provides: "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." The entire text of Section 506(d) is set out in the Appendix, *infra*.

[3] In fact, the property had not then been abandoned, but subsequently was abandoned on July 11, 1988. See J.A. 24.

ruptcy process." Pet. App. 29a. The district court summarily affirmed. *Id.* at 12a-13a.

4. The court of appeals also affirmed. The court relied on the effect of the abandonment, which required a determination by the trustee that the property "is burdensome to the estate or * * * of inconsequential value and benefit to the estate." Section 554(a); see Pet. App. 5a-6a. The court then determined that the "fundamental premise" of Section 506(a) was that it applies only when the estate has an interest in the property. Because "[t]he estate has no interest in, and does not administer, abandoned property," Section 506(a) should not apply. *Id.* at 6a. Finally, the court noted that a contrary result would be inconsistent with Section 722. In that section, Congress specifically granted debtors a limited right to redeem certain personal property. To hold that Section 506(d) granted a broader right to redeem real property, the court reasoned, would be inconsistent with the narrow language of Section 722. Pet. App. 9a-10a.

INTRODUCTION AND SUMMARY OF ARGUMENT

Chapter 5 of the Bankruptcy Code evaluates and sets priorities among the claims that creditors hold against bankrupt debtors. As a general matter, it analyzes claims pursuant to two criteria: whether they are allowable and whether they are secured. Because these criteria are not exclusive, they establish four types of claims: allowed secured claims, allowed unsecured claims, disallowed secured claims, and disallowed unsecured claims. The classification proceeds in two steps. First, Section 502 determines whether a claim is allowed or disallowed, generally by providing that the claim is allowed unless it falls within one of the exceptions set forth in the eight subparagraphs of Section 502(b), as modified by a number of miscellaneous rules set forth in Sections 502(c) through 502(j). If a claim is not allowed, the creditor will receive no distribution from the bankrupt's estate on that claim.

Second, Section 506 resolves a number of problems related to liens and allowed claims. Section 506(a) deals with allowed claims that exceed the value of the collateral given to secure repayment; it bifurcates those claims into an allowed secured claim, in the amount of the value of the collateral, and an allowed unsecured claim for the excess, so that the secured creditor can participate in any distributions to unsecured creditors to the extent of its unsecured claim. Sections 506(b) and 506(c) then deal with other situations not at issue here: allowed claims for less than the value of the collateral given to secure repayment, and treatment of administrative expenses related to the collateral.

This case concerns the effect of Section 506(d), which provides, with certain exceptions: "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." We think the meaning of this provision is clear from the statutory text and structure, the legislative history, and pre-Code practice. If a creditor has a claim against the debtor secured by a lien, but that secured claim is not an *allowed* secured claim, then the creditor's lien is void. In other words, if a creditor has a claim secured by a lien and if the claim is not allowed—typically because it falls within one of the categories of disallowed claims in Section 502(b)—then the lien is also void. This makes sense, because it would be curious to have a claim disallowed but leave the lien securing that claim unaffected.

Petitioner reads the provision differently, contending that the key word is not "allowed," but "secured"—*i.e.*, the lien is void to the extent that it secures a claim that is not an allowed *secured* claim under Section 506(a). Under this reading, Section 506(d) would operate to reduce the creditor's lien to the value of the allowed secured claim described in Section 506(a). In our view, this reading makes no sense. It strains the statutory language, flies in the face of the statute's structure, and is flatly inconsistent with the legislative history and pre-Code practice.

The "lien-stripping" allowed under petitioner's reading would have a dramatic impact on the effect of a subsequent disposition of the property at a price greater than the bankruptcy court's valuation. If petitioner is correct, and the property is foreclosed upon after the bankruptcy and sells for an amount greater than the value attributed to the collateral by the bankruptcy court, the excess will go not to the unpaid creditor who bargained for a lien on the collateral, and not to other creditors who did not receive full payments of their debts in the bankruptcy, but to the debtor. By contrast, under our view, the debtor can retain the collateral only by repaying the entire debt or otherwise settling with the creditor who bargained for a lien on the collateral. The bankruptcy, of course, discharged the debtor from *in personam* liability, but it should have no effect on the *in rem* obligation represented by the lien. See *Johnson* v. *Home State Bank*, No. 90-693 (June 10, 1991), slip op. 3-4.

The text of the main portion of Section 506(d) distinguishes between secured claims that are allowed and those that are not allowed, not, as petitioner would have it, between allowed claims that are secured and those that are not secured. Similarly, the two exceptions to the general rule set forth in the main portion of Section 506(d) are both examples of disallowed claims, not unsecured claims. Petitioner's reading transforms the provision—which makes no specific reference to unsecured claims at all—into a major vehicle for invalidating liens based upon the secured or unsecured nature of the related claim under Section 506(a).

Petitioner's reading also divorces Section 506(d) from its integral role in the Code's treatment of disallowed claims. To effectuate the disallowance set forth in Section 502, the Code discharges the debtor from *in personam* liability in Section 727(b). The natural role of Section 506(d) is to complete this process by preventing the creditor from gaining any recovery *in rem* for disallowed claims.

The heavy weight that petitioner's reading places on Section 506(d) detracts from its focus on allowability and leads in several ways to anomalous results inconsistent with the structure of incentives throughout the rest of the Code. First, petitioner's reading of Section 506 as granting a broad and unlimited right to redeem any property sets at nought the specific right of redemption offered by Section 722. That section reflects Congress's considered and detailed policy judgment as to the circumstances under which debtors should be permitted to retain collateral without paying their debts. By allowing debtors a broader and less exacting right to redeem property under Section 506(d), petitioner would obviate the need for the right granted in Section 722.

Second, petitioner's interpretation of Section 506(d) gives debtors the right to put creditors in a worse situation than the specifically articulated provisions in Chapters 11 and 13. In those Chapters—where debtors are agreeing to use their future income to repay their creditors—Congress did specifically determine that it was appropriate to alter the rights of creditors in their collateral, and included provisions in the Code that make this unmistakably clear, while protecting the creditor against adverse treatment that does not further the policies of the Code. Petitioner's reading of Section 506(d) grants debtors the same benefits, but gives creditors none of the protections imposed by Chapters 11 and 13. Considering the evident congressional purpose to encourage debtors to reorganize and attempt to use their future income to pay their creditors—rather than liquidate and walk away from their debts—it is incongruous to suppose that the spare language of Section 506 offers debtors in liquidation proceedings a better deal than the highly reticulated provisions of Chapters 11 and 13.

The House and Senate Reports accompanying the bills that became the Code unambiguously reflect the focus on allowability set forth in the text of Section 506(d) itself, by describing the operation of the provision as

invalidating liens that secure claims disallowed in a bankruptcy proceeding. Indeed, the House Report seems to propose the exact opposite of petitioner's analysis, by describing the provision as one that allows "liens to pass through the bankruptcy case unaffected." Thus, nothing in the legislative history suggests the broad role petitioner envisions for Section 506(d); instead, at every step Congress explained the provision in a manner consistent with the reading we urge.

Finally, as this Court's cases repeatedly have recognized, Congress in enacting the Bankruptcy Code is unlikely to have rejected firmly established rules of pre-Code law without some clear indication of its intent. Pre-Code law recognized a general rule that liens passed through bankruptcy unaffected. Bankruptcy law contained no procedure that would allow a debtor in a liquidation proceeding to force a creditor to give up collateral on which it had received a lien, without paying the full amount of the debt. Moreover, as this Court has recognized, the legislative history of the Code demonstrates that Congress was well aware of this prior history and, indeed, believed that Section 506(d) carried these rules forward into the Code. This is not the sort of record that can support the assumption that Congress deprived creditors of rights so well-established.

In sum, petitioner's reading of Section 506(d) as a general authorization by Congress to strip down the liens of secured creditors with allowed claims cannot be squared with the text, structure, or policies of the Code, or with the history that led to its enactment. This Court should reject that reading and affirm the judgment of the Tenth Circuit.

ARGUMENT

I. CLOSE READING OF THE TEXT OF SECTION 506(d) SHOWS THAT ITS EFFECT IS LIMITED TO DISALLOWED SECURED CLAIMS

The precise language of Section 506(d) is the best guide to the meaning of the provision. See, *e.g.*, *Pennsylvania Dep't of Public Welfare* v. *Davenport*, 110 S. Ct. 2126, 2130 (1990) (applying to the Bankruptcy Code "the fundamental canon that statutory interpretation begins with the language of the statute itself"). The main body of the provision states simply: "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." On its face, this appears to take one set of circumstances—where "a lien secures a claim"—and carve out of it a lesser and included set of circumstances—where that secured claim "is not an *allowed* secured claim." Liens in the carved-out set are void. Because both sets of circumstances are defined by reference to a "claim" that is "secured," and because the qualifying additional fact associated with the carved-out set of circumstances is that the secured claim is "not * * * allowed," the most natural understanding of the provision is that it operates to void liens on claims that are secured, but not allowed.

Petitioner reads this provision as turning not on whether the secured claim is allowed or not alowed, but on whether an allowed claim is secured or unsecured. According to petitioner, what the provision means is that a lien securing an unsecured claim is void. But the provision is triggered only "[t]o the extent that a lien secures a claim," and if a lien secures a claim the claim is not, at least in common parlance, unsecured. It is true that under certain circumstances Section 506(a) divides allowed claims secured by liens into secured claims and unsecured claims for purposes of distributions in the bankruptcy proceeding. But if, as petitioner supposes, the purpose of Section 506(d) was to deal with liens se-

curing these *unsecured* claims, it is implausible that Congress would have signalled such an intent with a general reference to circumstances in which "a lien secures a claim," rather than by a specific reference to Section 506(a) or to unsecured claims. Moreover, it is inconsistent to say—as petitioner urges—that the prime situation at which the provision is directed is one where, because the collateral is worth less than the amount of the claim, the lien in fact *fails* to secure the claim. Under petitioner's reading, a provision that applies "[t]o the extent that a lien secures a claim" actually applies *only* to the extent that the lien does *not* secure the claim. This reading is unnatural at best.[4]

That Section 506(d) turns on allowability is confirmed by the nature of the two exceptions to the body of Section 506(d). If Section 506(d) was concerned with the treatment of liens on unsecured claims, the exceptions presumably would address situations in which the unsecured status of a claim nevertheless did not trigger the general rule. By their terms, however, both of the exceptions are for disallowed claims. The first exception, Section 506(d)(1), protects liens that secure claims disallowed under Sections 502(b)(5) and 502(e). The second exception, Section 506(d)(2), protects the liens of secured creditors who fail to obtain allowed secured claim status solely because they fail to file a proof of claim under Section 501. Pursuant to Section 502(a), a claim is not allowed unless a proof of claim is filed; thus, absent Section 506(d)(2), liens securing payment of these claims would be voided by the main body of Section 506.

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[4] The text argues that the reference in Section 506(d) to claims that are not allowed secured claims was aimed at disallowed secured claims rather than at claims that become allowed unsecured claims by operation of Section 506(a). We note that, under any reading of the statute, we need not address the fourth type of claim, a disallowed unsecured claim, because it is not possible for Section 506(a) to produce a disallowed unsecured claim; Section 506(a), by its terms, applies only to "[a]n allowed claim."

In our view, it is more than a coincidence that there are no references to allowed unsecured claims in the exceptions to Section 506(d); the most likely explanation is that allowed unsecured claims do not fall within the body of Section 506(d) in the first place.

II. THE STRUCTURE OF THE CODE SHOWS THAT SECTION 506(d) CAN APPLY ONLY TO DISALLOWED CLAIMS

A. Section 506 Plays an Integral Role in the Code's Treatment of Disallowed Claims

A broader look at the structure of the Code confirms the integral role of Section 506(d) in the disposition of disallowed claims, a role that is completely unrelated to the status of the claims as secured or unsecured. See, *e.g.*, *Grogan* v. *Garner*, 111 S. Ct. 654, 659 n.13 (1991) (applying to Bankruptcy Code the teaching that "[i]n determining the meaning of the statute, we look not only to the particular statutory language but to the design of the statute as a whole and to its object and policy") (quotation omitted). As we mentioned above, Section 502 of the Code sets forth several categories of claims and subjects them to adverse treatment by excluding them from the group of claims that are allowed. For example, Section 502(b)(1) disallows claims that are unenforceable under state law, Section 502(b)(4) disallows claims for fees payable to attorneys or other insiders that exceed the reasonable value of the services, and Sections 502(b)(6) and 502(b)(7) disallow excessive claims for compensation for termination of a lease or employment contract.

In the bankruptcy proceeding itself, the holder of a disallowed claim receives no distribution for that claim.[5] Two provisions address the post-bankruptcy consequences of disallowed status. First, Section 727(b) grants eligible debtors a discharge "from all debts" that arose be-

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[5] See Sections 726(a); 1124(3)(A), 1325(a)(4) and (5).

fore the bankruptcy, "whether or not a claim based on any such debt * * * is allowed under section 502"; this protects the debtor from any subsequent *in personam* liability on disallowed claims.[6] Second, Section 506(d) deals with *in rem* liability, voiding liens that secure payment of the disallowed claims, ensuring that the disfavored creditor does not retain any avenue from which it might seek payment. In the absence of Section 506(d), a creditor holding a pre-bankruptcy judgment lien securing a disallowed claim could proceed after the bankruptcy to satisfy its claim out of any remaining property of the debtor, even if the property has been protected from creditors under the Code.[7]

In sum, the structure of the Code demonstrates a clear need and coherent purpose for Section 506(d), which—contrary to petitioner's submission—has nothing to do with allowed unsecured claims. Every definitive use of the provision points, like its language, to a focus on disallowed status rather than on unsecured status.

B. Application of Section 506(d) to Unsecured Claims Leads to Incongruous Results Inconsistent with Other Provisions of the Code

The best confirmation of the accuracy of the natural reading of the text described above comes from considera-

[6] Compare Section 1141(d)(1)(A)(ii) (similar treatment in Chapter 11 discharge); Section 1328 (similar treatment in Chapter 13 discharge).

[7] The coherence of this structure of provisions to effectuate the purposes of Section 502 is illuminated by the analogous provisions the drafters used to grant special treatment to unmatured alimony and child-support obligations. Section 502(b)(5) disallows these claims to the extent that they are unmatured; accordingly, pursuant to Sections 507 and 726, these obligations are not liquidated and prepaid in the bankruptcy. On the other hand, Section 523(a)(5) protects them from the normal discharge rules of Section 724(b), and Section 506(d)(1) protects liens that secure these claims from invalidation under Section 506(d), regardless of the value of the collateral or the amount of the allowed secured claim, as determined under Section 506(a).

tion of the bizarre results of petitioner's reading, which cannot be squared with the specific rights granted debtors in Section 722 or the detailed creditor-protective provisions set forth in Chapters 11 and 13.

1. Congress recognized the harsh straits debtors would face under a firm rule that did not allow debtors to alter any of the rights of secured creditors. Accordingly, in Section 722 it granted debtors a right in certain limited circumstances to redeem personal property by paying the creditor the value of the collateral, even if the value paid is less than the debt.[8] The rights granted to the debtor are limited carefully; they apply only to "tangible personal property intended primarily for personal, family, or household use."[9] Also, the debtor cannot leave its creditor in suspense during a long bankruptcy proceeding, because Section 521(2)(A) requires the debtor to notify the court within 30 days of the filing if it intends to redeem the collateral, and Section 521(2)(B) requires the debtor to complete the redemption within 45 days thereafter.

Under petitioner's reading Section 722, with its specific and limiting restrictions, is wholly superfluous, because a debtor, at any time or from time to time, and without regard to the nature of the collateral, could come to the

[8] The history of this provision is particularly damaging to petitioner's reading, because it demonstrates that Congress well understood that, in the absence of Section 722, the normal provisions of bankruptcy law would require the debtor to pay the entire amount of the debt if he wished to retain the collateral, even if the debt exceeded the value of the collateral. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 128 (1977) ("[I]t does little good to allow the debtor an exemption of wearing apparel, household goods, or health aids subject to an indefeasible security interest * * * if the debtor must pay more than the property is worth for the privilege of continuing to use the property.").

[9] The legislative history shows that the limitation to certain goods was intentional, so that the right would apply only to property necessary for the debtor to make a fresh start. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 127-128 (1977).

court under Section 506(d) and have the court strip down a lien to the value of the collateral. Moreover, although Section 722 alters the creditor's rights only if the debtor tenders full payment within 45 days, petitioner's reading of Section 506(d) would reduce the value of the lien immediately, and leave the debtor an option—to be exercised at any time before foreclosure—to tender to the creditor the amount of the lien and thus retain the collateral free and clear.[10] This effectively grants the debtor an opportunity to speculate as to market changes in the value of the collateral that is utterly inconsistent with the rigorous deadlines set forth in Section 521. Moreover, if petitioner is correct, there are no circumstances under which Section 722 would grant debtors more favorable treatment than Section 506(d). It is highly unlikely that Congress would have limited Section 722 so precisely if it was completely superfluous in light of Section 506(d).[11]

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[10] Basic property principles provide that if a debtor pays a creditor the entire sum secured by the collateral (that is, under petitioner's reading, the value of the collateral as determined by the bankruptcy court), there would be no remaining debt for the creditor's lien to secure, and thus the creditor no longer would be able to conduct a foreclosure sale. See 9 *Thompson on Real Property* § 4808 (J. Grimes ed. 1958 & Supp. 1981) (real property); U.C.C. § 9-506 (1978) (personal property). Of course, after a foreclosure is conducted, the entity that purchased at that sale would own the collateral and, absent some state-law right of redemption that continues after foreclosure, the debtor would be able to regain the collateral only by purchasing it from the subsequent owner. See *Thompson on Real Property, supra*, § 4822 (real property); U.C.C. § 9-504(4) (1978) (personal property).

[11] The consistently guarded approach that Congress took in deciding to alter the rights of lienholders is also apparent from Section 522(f), which grants the debtor a limited and carefully delineated right to avoid liens on exempt property. The power applies only to two particularly disfavored types of liens: (1) judicial liens and (2) nonpossessory, nonpurchase-money security interests in household goods, tools of the trade, or health aids. Thus, it never could apply to purchase-money security interests, any lien in real estate,

2. Petitioner's reading of Section 506(d) also undermines the incentives established by the finely reticulated provisions of Chapters 11 and 13. The distinction between a Chapter 7 bankruptcy, on the one hand, and a Chapter 11 or Chapter 13 bankruptcy, on the other hand, is fundamental. In a liquidation proceeding under Chapter 7, "the debtor gives up all non-exempt assets, the Trustee in Bankruptcy sells these assets, and the proceeds are distributed pro rata to creditors." E. Warren & J. Westbrook, *The Law of Debtors and Creditors* 179 (1986). By contrast, in a payout proceeding under Chapter 11 or 13, "a debtor can propose to keep all assets in exchange for promising to pay off debts over a period of time out of future income." *Ibid.*[12]

To encourage debtors to agree to use their future income to repay their debts in Chapter 11 and 13 proceedings, which theoretically benefit society because a debtor

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or, indeed, any bargained-for lien in personal property other than the especially favored types of property mentioned above. This provision's careful delineation of particular types of collateral and particular types of loans bespeaks an entirely more attentive and compromising attitude than petitioner's reading of Section 506, which suggests a Congress ready to alter creditors' rights wholesale, without any concern for the nature of the particular transaction being affected.

[12] It is important to recognize that a debtor's agreement to use its future income to pay its creditors has a dramatic effect on the amounts received by creditors. In Chapter 7 proceedings, the disproportionate majority of the cases produce nothing for general unsecured creditors. See, *e.g.*, Herbert & Pacitti, *Down and Out in Richmond, Virginia: The Distribution of Assets in Chapter 7 Bankruptcy Proceedings Closed During 1984-1987*, 22 U. Rich. L. Rev. 303, 310-311 (1988) (no assets for general unsecured creditors in 97% of Chapter 7 cases). Payout plans typically promise much more for creditors, see, *e.g.*, T. Sullivan, E. Warren & J. Westbrook, *As We Forgive Our Debtors* 45 n.27 (1989) (median repayment of 45% promised in confirmed Chapter 13 plans); LoPucki & Whitford, *Bargaining over Equity's Share in the Bankruptcy Reorganization of Large, Publicly Held Companies*, 139 U. Pa. L. Rev. 125, 142 (1990) (median repayment of 27% in large Chapter 11 cases), although it is not clear exactly how much actually is repaid.

"can keep assets instead of liquidating them, often at sacrifice prices," E. Warren & J. Westbrook, *supra*, at 179, the Code not only allows debtors to keep their assets, it also provides a number of other benefits not available to debtors in Chapter 7 bankruptcies. Most important of these for this case are the specific provisions that authorize Chapter 11 plans that "impair * * * any class of claims, secured or unsecured," Section 1123(b)(1), and Chapter 13 plans that "modify the rights of holders of secured claims," Section 1322(b)(2).[13]

Not surprisingly, the Code does not trust blindly in the good will of debtors to ensure that they do not abuse the power to alter the rights of secured creditors. Thus, this power is strictly defined, in an attempt to see that it is exercised only to further legitimate bankruptcy purposes without unnecessarily harming the secured creditor. Most importantly, the plan must pay all nonconsenting creditors at least as much as they would receive in a Chapter 7 liquidation. Sections 1129(a)(7)(A), 1325(a)(4). Moreover, both Chapters prohibit confirmation of any plan in which the debtor retains collateral over the objection of a secured creditor unless the creditor retains a lien equal to the amount of its allowed secured claim, and is scheduled to receive under the plan property or payments with a present value equal to the amount of its allowed secured claim. See Sections 1129(b)(2)(A), 1325(a)(5).[14] Because obligations under the plan are obligations of the debtor that continue after bankruptcy,[15] the creditor thus receives, in return for any reduction of its lien, a personal and continuing obligation of the debtor to repay the debt up to the value of the collateral as determined by the bankruptcy court.

Moreover, both Chapters limit the circumstances under which debtors can reduce liens. First, a plan under Chapter 13 cannot alter the rights of a secured creditor holding a mortgage on the debtor's principal residence. Section 1322(b)(2). Second, in reorganizations under Chapter 11, where the greatest amount of money is likely to be at stake, a secured creditor has the right, by waiving any unsecured claim against the debtor, to prevent reduction of the amount of its lien by electing treatment under Section 1111(b)(2).[16]

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[13] Perhaps the most notable of the other benefits is the ability of a consumer debtor to receive a broader discharge in a Chapter 13 bankruptcy than he could in a Chapter 7 bankruptcy. Compare Section 1328(a) (exceptions from discharge after successful completion of a Chapter 13 plan) with Section 523(a) (exceptions from discharge under Chapters 7 and 11, or under Chapter 13, if debtor fails to complete payments under plan).

[14] Technically, it would be possible for a court to confirm a Chapter 11 plan over a creditor's objections without retaining these protections for the creditor by determining that the plan granted the creditor the "indubitable equivalent" of its claims, Section 1129(b)(2)(A)(iii), but it is unlikely that anything determined to be the indubitable equivalent would protect the creditor less than the protections outlined in the text, as the contemporaneous legislative explanations of the provision make clear. See 124 Cong. Rec. 32,407, 34,007 (1978).

[15] Section 1141(d)(1) accomplishes this for Chapter 11 plans, by providing for a discharge of pre-petition debts "[e]xcept as otherwise provided in * * * the plan." In Chapter 13 plans, this generally is accomplished by provisions in Sections 1328(a)(1) and 1328(c)(1) that prevent discharge of any debt that does not mature during the pendency of the plan (which is treated under Section 1322(b)(5)). It is possible, with respect to short-term secured claims, which do mature during the term of the plan, for a debtor who fails to complete payments under the plan to secure a discharge under Section 1328(b) without making all of the payments with respect to those claims, but the price for that debtor is that it must forgo the benefits of the broader discharge it would have received under Section 1328(a), see note 13, *supra*. Moreover, the creditor at that point would be entitled to take the collateral in satisfaction of the unpaid obligation, because, as mentioned in the text, the Chapter 13 plan must allow the creditor's lien to continue in effect securing the obligation of the debtor under the plan.

[16] Section 1111(b)(2) itself does not directly affect the amount of the lien, but simply allows the creditor to avoid the operation of Section 506(a) and treat its entire allowed claim as secured. But because Section 1129(b)(2)(A)(i)(I) prevents confirmation over a creditor's objection of a Chapter 11 plan that does not grant the

Petitioner's reading of Section 506(d) would allow debtors to shortcut these complicated creditor-protective provisions and receive a better deal under Section 506(d) —available in a Chapter 7 liquidation proceeding—than Congress offered debtors to encourage them to use their future income to pay off their debts under Chapters 11 and 13. Most obviously, petitioner's reading allows the lien to be stripped without requiring any personal obligation on the part of the debtor to repay *any* amount of the debt; a discharge under Section 724, unlike the discharges available in Chapters 11 and 13, protects the debtor from any further personal liability. Also, petitioner's reading makes lien-stripping available at the option of the debtor, without regard to the creditor's wishes, and thus would allow a Chapter 7 debtor to reap a windfall if a bankruptcy court undervalued property, by purchasing the property at the court's valuation, and immediately reselling it at a profit. This is difficult to reconcile with the Section 1111(b) election discussed above, which allows a creditor, after it can evaluate the value chosen by the bankruptcy court and the likelihood of recovery on its unsecured claim, to waive its unsecured claim and

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creditor a lien in the amount of its allowed secured claim, the inevitable effect of an 1111(b) election is to grant the creditor a lien for the full amount of its claim.

To be sure, the present value of the amounts required to be paid the creditor under Section ~~1129~~(b)(2)(A)(i)(II) is only the value of the collateral, rather than the total amount of the lien. Thus, a debtor faced with a Section 1111(b) election by an undersecured creditor must make payments to the creditor that total the amount of the claim, with a present value equal to the value of the collateral. Although many debtors may be able to satisfy this requirement without incurring any burden beyond the burden of paying the present value of the collateral (by extending the period over which payments are made), in many circumstances a Section 1111(b) election will make it extremely difficult for a debtor to avoid paying an undersecured creditor amounts with a present value that exceeds the value placed on the collateral by the bankruptcy court. See generally L. LoPucki, *Strategies for Creditors in Bankruptcy Proceedings* § 12.7.5 (1985).

then retain a lien for the full amount of its debt. Finally, petitioner's reading allows consumers in Chapter 7 bankruptcies to avoid the specific restrictions Congress imposed on consumer payout plans, which prevents modification of home mortgages, see Section 1322(b)(2). It is difficult to believe that Congress wrote the specific provisions in Chapters 11 and 13, granting debtors limited rights to reduce creditor's liens, with the understanding that Section 506(d) granted debtors a broad and unlimited right to do so unrestrained by any of the constraints articulated in Chapters 11 and 13.

Petitioner's approach takes an innocuous, though important, provision intended to effectuate the policy decisions reflected in the provisions of Section 502 that disallow disfavored claims, and transforms it into a major disruption of the finely tuned and harmonious scheme of debtor and creditor protections realized throughout the Code.[17]

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[17] Section 552 of the Code offers yet another example of the incongruous effects of petitioner's reading. Under that Section, a creditor is entitled to enforce provisions of a security agreement that grant the creditor a lien on proceeds, rents, and profits arising out of its collateral. It is hard to reconcile this broad protection of lien rights with the effect petitioner sees in Section 506, which deprives a creditor of future appreciation in the value of its collateral by locking in the value of a creditor's lien to a value of the collateral determined by the bankruptcy court. If Congress would let a creditor retain proceeds, rents, and profits—which necessarily increase the value of the security held by the creditor—it is hard to see why Congress would deprive the creditor of something much more fundamental to its bargain: the full value of its collateral as it may exist from time to time.

III. THE LEGISLATIVE HISTORY OF THE CODE DEMONSTRATES THAT SECTION 506(d) WAS AIMED ONLY AT DISALLOWED CLAIMS, AND THAT CONGRESS DID NOT CONTEMPLATE APPLICATION OF THE PROVISION TO UNSECURED CLAIMS

The language of Section 506(d) as enacted in 1978 first appeared in the 95th Congress in H.R. 8200.[18] The entire section-by-section analysis of this provision in the accompanying House Report explained:

> *Subsection (d) permits liens to pass through the bankruptcy case unaffected.* However, *if* a party in interest requests the court to determine and allow or disallow the claim secured by the lien under section 502 and *the claim is not allowed, then the lien is void to the extent that the claim is not allowed.* The voiding provision does not apply to claims disallowed only under section 502(e), which requires disallowance of certain claims against the debtor by a codebtor, surety, or guarantor for contribution or reimbursement.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 357 (1977) (emphases added). This passage makes two points important to this case. First, the first sentence indicates that the provision generally allows liens to pass through the bankruptcy unaffected, a concept directly opposed to petitioner's contention that the purpose of Section 506(d) is to strip liens to the judicially determined value of the collateral. Second, the passage suggests a single exception, for cases in which the creditor comes into the bankruptcy and the court disallows its claim. Nothing in this passage suggests the broad intent petitioner ascribes to this provision, and her reading makes a mockery of the Committee's promise that liens will pass through unaffected.

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[18] For a general discussion of the legislative history of Section 506, see 3 *Collier on Bankruptcy* ¶ 506.03 (L. King 15th ed. 1991).

The Senate introduced a comparable bill in the same Congress, S. 2266. This bill contained a similar version of Section 506(d), which differed only in the language of the exceptions. The section-by-section analysis of this bill displays a similar intent: "Subsection (d) provides that to the extent a secured claim is *not allowed*, its lien is void unless the holder had neither actual notice nor knowledge of the case, the lien was not listed by the debtor in a chapter 9 or 11 case or such claim was disallowed only under section 502(e)." S. Rep. No. 989, 95th Cong., 2d Sess. 68 (1978) (emphasis added).[19] Like the explanation in the House Report, the Senate Report shows that the purpose of Section 506(d) was to invalidate liens securing disallowed claims.[20]

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[19] It is fruitful to compare the legislative explanation of this provision to the explanation the Senate offered in the same report for Section 722, which, as discussed above, granted debtors a limited right of redemption with respect to certain types of personal property. The report explained: "This right to redeem is a very substantial change from current law." S. Rep. No. 989, *supra*, at 95. If petitioner were correct in reading Section 506(d) as an even broader weapon effectively granting an unconstrained right to redeem *any* type of collateral, surely the explanation for Section 506(d) at least would have alluded to this even more substantial change from prior law.

The introductory portion of the House Report did note that "[o]ne of the more significant changes from current law in proposed title 11 is the treatment of secured creditors and secured claims." H.R. Rep. No. 595, *supra*, at 180. But it went on to describe the specific change to which it was referring: the provisions of the bill that distinguish between secured and unsecured claims, rather than between secured and unsecured creditors. That relatively procedural change, of course, is indubitably clear on the face of Section 506(a). There is not a hint of the revolutionary import petitioner attaches to Section 506(d).

[20] Although there is no committee report explaining why Congress chose to enact the House version of Section 506(d), Senator DeConcini and Representative Edwards each introduced into the Congressional Record for his respective Chamber detailed comments explaining in substantially identical terms that the additional exception contained in the Senate bill (which protected tax authorities

In sum, Congress' contemporaneous explanations of the purpose of Section 506(d) explicitly describe its effect on a lien as turning on whether the claim is allowed or disallowed, not—as petitioner would have it—on whether the claim is secured or unsecured under Section 506(a). Under Section 506(d), "the lien is void to the extent that the claim is not allowed" (H.R. Rep. No. 595, *supra*, at 357)—not, as under petitioner's reading, to the extent that the claim is unsecured. Section 506(d) voids a lien "to the extent a secured claim is not allowed" (S. Rep. No. 989, *supra*, at 68)—not, as under petitioner's reading, to the extent an allowed claim is unsecured. There is not so much as a snippet of legislative history to suggest any relation between Section 506(d) and the bifurcation established by Section 506(a) or, indeed, any application of Section 506(d) to unsecured claims at all. It is almost unimaginable to believe that this is the kind of record one would find if Congress intended the provision to have the meaning urged by petitioner.[21]

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who had no knowledge of the bankruptcy) was deleted because it was superfluous in light of the general provision in the House bill that Section 506(d) would not void liens held by creditors that did not file in the bankruptcy. 124 Cong. Rec. 32,414-32,415, 34,014 (1978). Again, there is not a hint here that the provision should have any effect on unsecured claims.

[21] Section 506(d) was amended by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 448(b), 98 Stat. 374. The amendments did not affect the main portion of the provision, but only made technical correcting changes to the exceptions, and revised the language of the existing exceptions "to make clear that the failure of the secured creditor to file a proof of claim is not a basis for avoiding the lien of the secured creditor." S. Rep. No. 65, 98th Cong., 1st Sess. 79 (1983); see 3 *Collier on Bankruptcy* ¶ 506.03, at 506-14 (L. King 15th ed. 1991) (discussing the history of the amendment); *id.* ¶ 506.07, at 506-68 to 506-70, 506-72 to 506-73 (discussing problems in interpretation that led to the amendment).

IV. PETITIONER'S READING CONSTRUES SECTION 506(d) TO WORK A DRAMATIC AND UNEXPLAINED CHANGE IN PRE-CODE BANKRUPTCY LAW

As this Court has recognized for decades, Congress is "not writing on a clean slate" when it amends the bankruptcy laws. *Emil* v. *Hanley*, 318 U.S. 515, 521 (1943). Consequently, this Court has shown a considerable reluctance to accept arguments that would interpret vague or innocuous provisions of the Code to wreak major changes in pre-Code practice that are not discussed in the legislative history. "[A] major change in the existing rules would not likely have been made without specific provision in the text of the statute; it is most improbable that it would have been made without even any mention in the legislative history." *United Savings Ass'n* v. *Timbers of Inwood Forest Associates*, 484 U.S. 365, 380 (1988) (citation omitted).[22] Examination of pre-Code practice shows that the rule petitioner seeks would conflict with the meaning of prior law, as interpreted by this Court and understood by the Congress that drafted the Code.

Although many things may have been unclear about the treatment of secured creditors under the Bankruptcy Act of 1898, one bedrock principle was beyond dispute: absent some policy consideration specifically reflected in the Code, liens passed through bankruptcy unaffected.[23] Indeed, Section 67d of the Act made this explicit:

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[22] See, *e.g.*, *Pennsylvania Dep't of Public Welfare* v. *Davenport*, 110 S. Ct. at 2133 ("We will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure."); *United States* v. *Ron Pair Enterprises*, 489 U.S. 235, 245 (1989); *Kelly* v. *Robinson*, 479 U.S. 36, 47 (1986); *Midlantic Nat'l Bank* v. *New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 501 (1986). For cases applying this rule to interpret bankruptcy statutes predating the Code, see *Emil* v. *Hanley*, 318 U.S. at 521; *Swarts* v. *Hammer*, 194 U.S. 441, 444 (1904).

[23] This Court recently acknowledged this general pre-Code rule in *Farrey* v. *Sanderfoot*, No. 90-350 (May 23, 1991), slip op. 6

> Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act.

30 Stat. 564.[24] Nor can it be said that the strong language of the statute was undermined by judicial exceptions. As this Court recognized, "Section 67d * * * declares that liens given or accepted in good faith and not in contemplation of or in fraud upon this act, shall not be affected by it." *City of Richmond* v. *Bird*, 249 U.S. 174, 177 (1919).[25]

("Ordinarily, liens and other secured interests survive bankruptcy."); see *Johnson* v. *Home State Bank*, No. 90-693 (June 10, 1991), slip op. 5 ("a bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor *in personam*—while leaving intact another—namely, an action against the debtor *in rem*").

[24] The animus against liens incurred under questionable circumstances continues in the new Code. See Sections 547, 548.

[25] See also, *e.g.*, *City of Dallas* v. *Ryan* (*In re Brannon*), 62 F.2d 959, 961 (5th Cir.) ("[T]rue liens, however arising, which are not expressly invalidated by the Bankruptcy Act, remain good, and the trustee takes his title * * * subject to them."), cert. denied, 289 U.S. 742 (1933). See generally 4B *Collier on Bankruptcy* ¶ 70.70 (J. Moore 14th ed. 1979).

To be sure, the specific phrase regarding the continuing validity of liens was removed in a reorganization of this Section in 1938, but this seems to have been done not to remove the rule of validity, but instead because "the draftsmen of the 1938 Act desired generally to specify only what should be *invalid*." 4B *Collier on Bankruptcy* ¶ 70.70, at 771 (J. Moore 14th ed. 1979) (emphasis in original). There is no doubt that the alteration of the language had no substantive effect. As the Fifth Circuit explained:

> It is true that * * * the Chandler Act did not retain the old language saying expressly that liens valid in bankruptcy shall 'not be affected by anything herein,' but that provision was simply declaratory of the obvious import reflected, and still reflected, frequently in the substantive terms of the law, and the omission of such redundancy is not significant.

Oppenheimer v. *Oldham*, 178 F.2d 386, 389 (1949).

Examination of the Act's treatment of undersecured creditors confirms this understanding in the precise context relevant to the case at hand: outside of reorganization proceedings,[26] no provision of the Act countenanced involuntary reduction of the amount of a creditor's lien for any reason other than payment of the debt; the Act generally dealt only with *in personam* liabilities. Cf. *Johnson* v. *Home State Bank*, No. 90-693 (June 10, 1991), slip op. 5-6 (drawing a similar distinction in treatment of mortgages under the Code). Practice under the Act gave an undersecured creditor three options: "(1) to prove his claim as an *unsecured* claim and surrender his security; or (2) to prove his claim as a *secured* claim and give the bankrupt credit for the value of the security; or (3) not to prove at all and rely solely on the security." 3 *Collier on Bankruptcy* ¶ 57.07[3], at 169 (J. Moore 14th ed. 1976). The first option is irrelevant to our inquiry; if the creditor waives its lien, the effect on its rights is not involuntary. The third option grants the creditor rights analogous to the result under Section 506(d)(2): the lien passes through the bankruptcy unaffected. See 3 *Collier on Bankruptcy* ¶ 57.20[3] (J. Moore 14th ed. 1976). The second option most closely resembles the present facts, where the secured creditor attempts to receive a share of the bankrupt's estate to

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[26] Chapter X of the Act did permit modification of liens in connection with a plan of reorganization. 11 U.S.C. 616(1), 616(10) (1976). But this provision, like the analogous provisions in the new Chapters 11 and 13 discussed above, included a variety of mechanisms to protect the unconsenting creditor. See Section 616(7). The existence of this narrow provision, a precursor of the provisions of Chapters 11 and 13 discussed above, undermines petitioner's reading of Section 506(d) as a wide-ranging lien-stripping provision, by showing the longstanding tradition of allowing such a remedy only in connection with a reorganization proceeding that affords substantial protections to affected creditors.

compensate for a shortfall between the value of its collateral and the amount of its claim. In this situation, it is clear that the creditor was entitled to pursue the collateral to the full extent of its debt, even if the "security proved subsequently to be more valuable than estimated" in the bankruptcy court. *Id.* ¶ 57.20[6.2], at 359.[27]

The best illustration of the clear understanding of the inviolability of liens in bankruptcy proceedings is this Court's response to the Frazier-Lemke Act, a statute that indisputably did alter the rights of lienholders. As this Court explained, the "avowed object" of that Act—like petitioner's reading of Section 506(d)—"is to take from the mortgagee rights in the specific property held as security; and to that end 'to scale down the indebtedness' to the present value of the property." *Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555, 594 (1935). Under the Act, if the holder of a mortgage on a farm owned by a bankrupt consented, the debtor could buy the farm for its then appraised value by a series of payments over six years. If the creditor did not consent, the bankruptcy court would stay proceedings for five years, at which point the debtor could purchase the property for its appraised value, whether or not the creditor consented. *Id.* at 575-576.

In the course of invalidating this statute under the Takings Clause, this Court undertook a comprehensive examination of the rights of secured creditors against bankrupt debtors. It repeatedly rejected any notion that existing law forced creditors to suffer the intrusions petitioner finds in Section 506(d) of the Code. With respect

[27] There was some question as to what would happen if the creditor received more from the collateral than the amount of its outstanding debt. Apparently, "in this rare case," where the creditor had collected more than its full claim, the valuation of the collateral might be reconsidered, apparently so that the creditor could be forced to return any distribution it had received from the estate. See 3 *Collier on Bankruptcy* ¶ 57.20[6.2], at 358-359 (J. Moore 14th ed. 1976).

to the general law of creditor's rights, the Court explained: "No instance has been found, except under the Frazier-Lemke Act, of either a statute or decision compelling the mortgagee to relinquish the property to the mortgagor free of the lien unless the debt was paid in full." *Radford*, 295 U.S. at 579. With respect to national bankruptcy laws, the Court concluded that "none had, prior to the Frazier-Lemke amendment, sought to compel the holder of a mortgage to surrender to the bankrupt either the possession of the mortgaged property or the title, so long as any part of the debt thereby secured remained unpaid." *Id.* at 581-582. It noted that the federal bankruptcy laws had permitted certain property to be exempted from general creditors, but explained, by reference to the rule in *Long* v. *Bullard*, 117 U.S. 617, 620-621 (1886), that this had only a limited effect, because "unless the mortgagee released his security, in order to prove in bankruptcy for the full amount of the debt, a mortgage even of exempt property was not disturbed by bankruptcy proceedings." *Radford*, 295 U.S. at 582-583.

Finally, it is clear that Congress drafted and passed the Code with full understanding of this practice. As we mentioned above, the House Report accompanying Section 506(d) explicitly stated its understanding that the general import of Section 506(d) was to permit "liens to pass through the bankruptcy case unaffected." H.R. Rep. No. 595, *supra*, at 357. We submit that it passes belief that the House would have described a provision working the dramatic change petitioner sees in Section 506(d) by reference to the pre-Code maxim that liens pass through bankruptcy unaffected.

Congress' understanding of the law on this point appears even more clearly from the history of related provisions. For example, as mentioned above, when Congress drafted Section 722—the one provision in the Code that does allow a debtor in a liquidation case to retain collateral without paying the debts that encumber that col-

lateral—it noted that under the existing law, a debtor faced with an undersecured creditor "must pay more than the property is worth for the privilege of continuing to use the property." H.R. Rep. No. 595, *supra*, at 128. Congress could not have thought this statement to be correct if it had thought that the pre-Code law provided for the lien-stripping petitioner seeks to read into Section 506(d).

Finally, as this Court has recognized, a similar understanding is evident from the history of Section 522(c)(2)(A)(ii), which provides that a bankruptcy does not affect liens on exempt property unless the liens are voided under Section 506(d). If petitioner is correct, this provision would mean that liens on exempt property are unaffected only in the rare case in which the creditor is fully secured; under our reading, of course, the liens would be affected only if the claim was disallowed. The latter reading is the only one consistent with Congress' intent. Citing *Radford* and *Long* v. *Bullard*, both the House and the Senate Reports explained that Section 506(d) (as incorporated by reference into Section 522(c)) followed the rule that the "bankruptcy discharge does not prevent enforcement of valid liens," and that by enactment of Section 522(c) the Code was accepting this rule "with respect to the enforcement of valid liens on nonexempt property as well as on exempt property." H.R. Rep. No. 595, *supra*, at 361; S. Rep. No. 989, *supra*, at 76. This passage demonstrates two things. First, Congress clearly understood that existing law did not provide for any reduction in liens of undersecured creditors with allowed claims because of a bankruptcy of their debtors. Second, it thought that Section 506(d) carried that rule forward in the Code. See *Farrey* v. *Sanderfoot*, No. 90-350 (May 23, 1991), slip op. 6 (citations omitted) ("[I]t was well settled when § 522(f) was enacted that valid liens obtained before bankruptcy could be enforced on exempt property, including otherwise exempt homestead property. Congress generally preserved this principle when it comprehensively revised bankruptcy

law with the Bankruptcy Reform Act of 1978.").[28] Congress could not rationally have explained Section 522(c) in this manner if petitioner's reading of Section 506(d) was correct.

In sum, the text of Section 506(d) strongly indicates that the provision affects only a secured claim that is not allowed. The structure of the Code shows that this is a sensible reading, and that petitioner's reading is inconsistent with the painstaking approach Congress took in the provisions that affected the rights of lienholding creditors. Finally, the legislative history and pre-Code practice show a consistent history of protection for the rights of secured creditors that petitioner would have stripped by Section 506(d), and not a snippet of a suggestion that Congress intended to intrude on those rights here. At bottom, it is just not plausible that Congress could have granted debtors the broad new remedy against allowed unsecured claims that petitioner sees in Section 506(d) without specifically mentioning this powerful remedy someplace in the Code or in its legislative history.

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[28] See also *Johnson* v. *Home State Bank*, No. 90-693 (June 10, 1991), slip op. 4 ("Codifying the rule of *Long* v. *Bullard*, 117 U.S. 617 (1886), the Code provides that a creditor's right to foreclose on the mortgage survives or passes through the bankruptcy.").

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

RONALD J. MANN
Assistant to the Solicitor General

ALAN CHARLES RAUL
General Counsel
Department of Agriculture

ERIC S. BENDERSON
Associate General Counsel for Litigation
Small Business Administration

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APPENDIX

§ 506. Determination of secured status

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.